

CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8)

Applicant(s): Jacques Degelaen, Jean-Marie Frere, Benoit Granier, Bernard Joris

Docket No.

Neogen 4.1-48

Application No.

10/702,507

Filing Date

November 7, 2003

Examiner

Bao-Thuy L. Nguyen

Customer No.

21036

Group Art Unit

1641

Invention: **ASSAY DEVICE FOR DETERMINING ANALYTES IN A LIQUID DAIRY PRODUCT**

FEB 11 2008

I hereby certify that this Reply to Examiner's Answer

(Identify type of correspondence)

is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope

Mail Stop Appeal Brief - Patents

addressed to "Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA

22313-1450" [37 CFR 1.8(a)] on

February 7, 2008

(Date)

Tammi L. Taylor

(Typed or Printed Name of Person Mailing Correspondence)

Tammi L. Taylor

(Signature of Person Mailing Correspondence)

Note: Each paper must have its own certificate of mailing.



Neogen 4.1-48
Appl. No. 10/702,507
February 4, 2008
Reply to Examiner's Answer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS**

Appl. No. : 10/702,507 Confirmation No. 8535
Applicants : Jacques Degelaen, Jean-Marie Frere,
Benoit Granier and Bernard Joris
Filed : November 7, 2003
Title: : ASSAY DEVICE FOR DETERMINING ANALYTES IN A
LIQUID DAIRY PRODUCT
TC/A.U. : 1641
Examiner : Bao-Thuy L. Nguyen
Docket No. : Neogen 4.1-48
Customer No. : 21036

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO EXAMINER'S ANSWER

Sir:

The Examiner's Answer conveniently ignores the fact that Markovsky et al. uses antibodies which are specific to the assay described and clearly shows that hindsight reasoning based upon Applicants' disclosure is being used. There is no suggestion in this reference of providing or

Neogen 4.1-48
Appl. No. 10/702,507
February 4, 2008
Reply to Examiner's Answer

teaching of an assay as in Claims 24 to 40 and of a bacterial protein receptor of any kind to bind the β -lactam antibiotics. One skilled in the art would not look to Markovsky et al. for any membrane derived bacterial receptors, much less than the ones from the *Bacillus lichenformis*. Considering the huge number of bacteria, one skilled in the art would not select the specific bacteria membrane receptor set forth in Claims 24 to 40 based upon this reference.

Joris et al. provides a basis for identifying the outer membrane protein as a penicillin receptor for a single β -lactam antibiotic (penicillin). There is no discussion of the receptor functioning for a number of β -lactam antibiotics as disclosed in the specification and as specifically set forth in Claim 32. There is no suggestion of the use of the BlaR or BlaR-CTD bacterial membrane receptor in a very specific flow assay as in Claim 24 with a particular membrane (Claim 24(i)) to retain leukocytes. Litman et al. is equally generic as to the receptor with no suggestion of a BlaR or BlaR-CTD receptor. Pall et al. describes non-woven polyester materials and their use in treating biological fluids. There is no suggestion of a use in an assay such as set forth in

Neogen 4.1-48
Appl. No. 10/702,507
February 4, 2008
Reply to Examiner's Answer

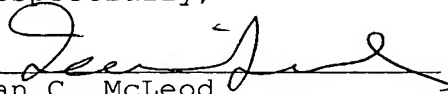
independent Claim 24 or the dependent claims.

One consideration which applies to obviousness rejections is that the references must be viewed without the benefit of hindsight vision afforded by the claimed invention. "It is difficult but necessary that the decision maker forget what he or she has been taught ... about the claimed invention and cast the mind back to the time the invention was made (often as here many years), to occupy the mind of one skilled in the art who is presented only with the references, and who is normally guided by the then-accepted wisdom in the art." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). The references relied upon in the combination rejection could not lead one skilled

Neogen 4.1-48
Appl. No. 10/702,507
February 4, 2008
Reply to Examiner's Answer

in the art to Applicants' claimed invention without
hindsight. Reversal of the rejection is requested.

Respectfully,



Ian C. McLeod
Registration No. 20,931

IAN C. McLEOD, P.C.
2190 Commons Parkway
Okemos, Michigan 48864

Telephone: (517) 347-4100
Facsimile: (517) 347-4103
Email: ianmclcd@comcast.net